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Group asks judge to verify petition for a referendum

Mike Morris and Katherine Driessen | Aug. 5, 2014 | Updated: Aug. 6, 2014 10:42 a.m.



Mayor Annise Parker and City Attorney David Feldman, announce that the petition to repeal the Houston Equal Rights Ordinance adopted by the City Council in May has fallen short of the number of signatures required due to errors in the signature collection process Monday, Aug. 4, 2014. in Houston. The 15,249 valid signatures fell short of the 17,269 required. Pages of

Opponents of Houston's new nondiscrimination ordinance sued the city late Tuesday, one day after city officials rejected a petition the group had submitted in hopes of forcing a repeal referendum in November.

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signatures to force a vote, only to have City Attorney David Feldman illegally insert himself into verifying the petition, invalidating more than half of the petition's 5,200 pages for failing to satisfy legal requirements in the city charter. That left opponents roughly 2,000 names short of the 17,269-signature threshold needed to force a referendum.

In a memo to Mayor Annise Parker and the City Council, Russell said she had found 17,846 valid signatures before Feldman reviewed the pages, and attributed the lower count to her review of his office's work. At an injunction hearing Tuesday night, plaintiffs argued Russell's initial count was the important one by law and should have triggered a referendum. City attorneys disagreed, saying Russell ultimately found there were not enough signatures.

"If he (Feldman) felt there were underlying problems with the petition then he, like us, has the right to file a lawsuit if he doesn't agree with what the city secretary did," said conservative activist Jared Woodfill, one of the four plaintiffs. "Going in before she's ever made the decision and influencing her is inappropriate, it's illegal and we believe the court will agree with us and that folks will have their voices heard in November on this issue."

Ruling Wednesday?

Visiting Judge John Coselli did not rule on the plaintiffs' injunction request. *The judge indicated he could rule as early as Wednesday morning.*

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to interpret the law and give legal advice.

"There's nothing that would preclude me from giving legal advice to the city secretary," Feldman said. "In fact, that's what our ordinances would expect me to do: Give advice to her on an issue which is really a legal issue. The question of whether or not those pages are valid because of the issue of meeting or not meeting the requirements of the charter is a legal issue."

City Council approved the so-called Houston Equal Rights Ordinance on an 11-6 vote in May, banning discrimination among businesses that serve the public, private employers, in housing and in city employment and city contracting. Religious institutions are exempt. Violators can be fined up to \$5,000.

The measure's divisiveness stems from the protections it extends to gay and transgender residents, groups not already protected under federal laws barring discrimination

Opponents promised to send the issue to the voters, and on July 3, they claimed to have delivered more than 50,000 signatures - 31,000 of them verified, they said - to the city secretary's office.

In Tuesday's filing, opponents sought a declaration that their petition is valid and contains the needed number of signatures. They also claim none of the "so-called problems" Feldman identified should have rendered Russell's initial count moot.

The mayor, the City of Houston and Russell are listed as defendants.

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A spokeswoman for Parker pointed to a Monday press release issued after the petition was rejected.

"I fully expect the petitioners will want to fight this decision at the courthouse," the statement said. "I am confident the courts will agree that the rules set out in our Charter and state law to protect the integrity of the process should be followed and that the results of our review will be upheld. The judicial review will provide additional assurance to the voters that the process has been fair."

A very high bar

Opponents faced an unusually high and technical bar to gather enough signatures. For petitions seeking to repeal a city ordinance, all the signatures on a page are thrown out if the circulators who collected those signatures or the notaries who signed off on the page made a mistake.

Feldman and his staff threw out more than half the 5,199 pages, containing about 16,000 signatures – many of them likely valid. Most pages were thrown out because those who collected names for the petition were not registered Houston voters or did not sign the petition themselves. Those errors invalidated more than 2,000 pages with about 11,300 signatures.

The city charter provision regarding attempts to repeal an ordinance hasn't come up since a 1996 repeal effort over affirmative action, officials said. The city has mostly dealt with petitions to amend the city

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Russell, who has worked for the city more than six decades, said earlier Tuesday that she could not recall another instance in which city attorneys reviewed the pages of a petition. However, she said, the petition process to overturn an ordinance is unusual in itself because other petition processes do not require that each page be notarized.

Bob Stein, a political science professor at Rice University, said the city's process for repeal referendums is likely to come up in court. "The real question is whether or not you can invalidate a signature because it happens to be on a page that is invalidated," he said. "This is going to be an issue of voter's rights."

Opponents are asking the judge to suspend enforcement of the ordinance, triggering the referendum process. Parker has already said she will wait to enforce the ordinance until there's legal clarity.

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